

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Sok Kong, Trustee for Next-of-Kin of Map
Kong, Decedent,

Plaintiff,

v.

City of Burnsville; Maksim Yakovlev, in
his individual and official capacity; John
Mott, in his individual and official
capacity; and Taylor Jacobs, in his
individual and official capacity,

Defendants.

Case No. 16-cv-03634 (SRN/HB)

ORDER

Richard E. Student and Steven J. Meshbesher, Meshbesher & Associates, P.A., 10 South Fifth Street, Suite 225, Minneapolis, MN 55402 for Plaintiff.

Patrick C. Collins and Joseph E. Flynn, Jardine Logan & O'Brien PLLP, 8519 Eagle Point Boulevard, Suite 100, Lake Elmo, MN 55042 for Defendants.

SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on remand from the Eighth Circuit Court of Appeals. In a December 2018 Order [Doc. No. 60], this Court granted in part and denied in part Defendants' Motion for Summary Judgment in this officer-involved shooting case. *Kong v. City of Burnsville*, No. 16-cv-3634 (SRN/HB), 2018 WL 6591229 (D. Minn. Dec. 14, 2018.) Specifically, the Court granted Defendants' summary judgment motion with respect to Plaintiff's § 1983 medical indifference claim arising under the Fourteenth Amendment, but denied the motion as to his § 1983 excessive force claim arising under the Fourth Amendment,

and also as to his state law negligence claim. *Id.* at *1. The Court found that questions of fact precluded summary judgment on the issue of qualified immunity for Plaintiff's Fourth Amendment claim, and denied summary judgment on that basis. (*Id.* at 10–18.) With respect to Plaintiff's state law negligence claim, the Court found that the record did not clearly show that Defendants had complied with their own crisis intervention policy, and therefore, were not entitled to official immunity on summary judgment. *Id.* at 21–22.

Defendants appealed the denial of summary judgment to the Eighth Circuit. The Eighth Circuit reversed this Court's ruling, finding that Defendants were entitled to qualified immunity on the Fourth Amendment claim, and official immunity on the negligence claim, and remanded the matter to this Court for further proceedings consistent with that ruling. *Kong v. City of Burnsville*, 960 F.3d 985, 992–97 (8th Cir. 2020). Following the denial of Plaintiff's petition for rehearing en banc and petition for panel rehearing before the Eighth Circuit, *Kong v. City of Burnsville*, __ F.3d __, 2020 WL 4462676 (8th Cir. July 30, 2020), the Eighth Circuit issued its mandate on August 6, 2020, [Doc. No. 76], vesting this Court with jurisdiction. Consistent with the Eighth Circuit's ruling on Defendants' appeal, Defendants' summary judgment motion is therefore granted.

Accordingly, **IT IS HEREBY ORDERED that**

1. Defendants' Motion for Summary Judgment [Doc. No. 35] is **GRANTED**; and
2. This action is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 10, 2020

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge